Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
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L2	41	(375/360 or 375/371 or 375/375). ccls. and @ad<"20010509" and @pd>"20040913"	US-PGPUB; USPAT	ADJ	ON	2005/05/25 09:45
L3	31	2 not 1	US-PGPUB; USPAT	ADJ	ON	2005/05/25 08:49

v.) Judge John W. Darrah AUDI OF AMERICA, INC.,) Defendant.)

MEMORANDUM OPINION AND ORDER

Plaintiff Velocity Patent LLC ("Velocity") brought an action against Defendant Audi of America, Inc. ("Audi") for patent infringement under 35 U.S.C. § 1 *et seq*. Audi filed a Motion to Dismiss Velocity's First Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), and a Motion to Transfer this case to the United States District Court for the Eastern District of Michigan, pursuant to 28 U.S.C. § 1404(a).

BACKGROUND

Velocity is a limited liability corporation organized under the laws of Illinois, with a principal place of business in Atherton, California. (Am. Compl. ¶ 2.) Audi is a corporation organized under the laws of Michigan with a principal place of business in Auburn Hills, Michigan. (*Id.* at ¶ 3.) Audi advertises, markets, and distributes automobiles throughout the United States. (*Id.* at ¶ 4.) Velocity owns all rights, title, and interest in U.S. Patent No. 5,954,781 ("the '781 patent"), which was issued on September 21, 1999. (*Id.* at ¶¶ 8-9.)

Audi manufactures, uses, imports, offers for sale, and sells automobiles that include: radar-based safety features comprising a "Driver Assistance package"; displays providing drivers

information regarding fuel consumption and efficiency of operation; engines with cylinder on demand technology; and automatic transmissions with manual gear-shifting features. (Id. at ¶¶ 11-14.) Twenty-five of Audi's models include one or more of these features, with an onboard computer system that manages the features. (Id. at ¶¶ 15-16.) By manufacturing and selling the aforementioned models equipped with these features, Audi has directly infringed, and continues to infringe, either literally or under the doctrine of equivalents, at least claims 1, 7, 13, 17, 23, 26, 28, and 31 of the '781 Patent in violation of 35 U.S.C. § 271. (Id. at ¶¶ 15, 17.) Audi received notice of the alleged infringement. (Id. at ¶¶ 18.)

LEGAL STANDARD

A properly stated claim in a well-pleaded complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought." Fed. R. Civ. P. 8. A defendant may file a motion to dismiss the claim for failure to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6). Withstanding such a motion requires alleging enough facts to support a claim that is "plausible on its face."

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. Although the plausibility standard does not require a showing of "probability," a mere showing of the possibility that the defendant acted unlawfully is insufficient. Id.

A district court may transfer any civil action "[f]or the convenience of parties and witnesses, in the interest of justice ... to any other district or division where it might have been brought" 28 U.S.C. § 1404(a). This decision "permits a flexible and individualized analysis" unconstrained by "a narrow or rigid set of considerations in their determinations."

Research Automation, Inc. v. Schrader Bridgeport Int'l, Inc., 626 F.3d 973, 978 (7th Cir. 2010) (citations and quotations omitted). The movant bears the burden of showing the transfer forum is more convenient. *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219-20 (7th Cir. 1986).

ANALYSIS

Motion to Dismiss

"A motion to dismiss for failure to state a claim upon which relief can be granted is a purely procedural question not pertaining to patent law." *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1355-56 (Fed. Cir. 2007). Therefore, Seventh Circuit law applies. *Id.* However, the Federal Rules of Civil Procedure provide a series of forms that "suffice under the[] rules and illustrate the simplicity and brevity that the[] rules contemplate." Fed. R. Civ. P. 84. It follows that any pleading that properly adheres to the specificity of one of the forms "cannot be successfully attacked." *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1334 (Fed. Cir. 2012)

Form 18 in the Appendix of Forms lays out the components of a complaint for patent infringement. *K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277, 1283 (Fed. Cir. 2013). It requires "1) an allegation of jurisdiction; 2) a statement that the plaintiff owns the patent; 3) a statement that defendant has been infringing the patent 'by making, selling, and using [the device] embodying the patent'; 4) a statement that the plaintiff has given the defendant notice of its infringement; and 5) a demand for an injunction and damages." *McZeal*, 501 F.3d at 1357. "That Form 18 would control in the event of a conflict between the form and *Twombly* and *Iqbal* does not suggest, however, that we should seek to create conflict where none exists." *K-Tech*, 714 F.3d at 1284.

Velocity's First Amended Complaint contains each element required in Form 18. Audi apparently concedes this fact, but argues that "merely identifying allegedly infringing systems as required by the Form is not sufficient to state a claim." (Dkt. No. 47 at 2.)¹ Without offering authority for this particular proposition, Audi transitions to the argument that the Seventh Circuit requires plausibility in accordance with *Twombly* and *Iqbal*. However, Audi's cited cases are distinguishable.² In this case, there is no conflict between Form 18 and *Twombly* and *Iqbal*. The First Amended Complaint provided Audi with adequate notice. *See McZeal*, 501 F.3d at 1357 ("A patentee need only plead facts sufficient to place the alleged infringer on notice as to what he must defend.").

Audi's assertion that Velocity must "plead specific facts showing not only which features are accused, but also why those features would plausibly meet the limitations of the asserted patent claims" is unpersuasive. The first case Audi cites in support of this argument is *K-Tech*, which held such specificity among allegedly infringing parts is unnecessary to survive a motion to dismiss. *K-Tech*, 714 F.3d at 1286 ("That K-Tech cannot point to the specific device or product . . . that translates the digital television signals each receives — especially when the operation of those systems is not ascertainable without discovery — should not bar K-Tech's

¹ Because this opinion regards multiple motions, responses and replies, each is referred to by its docket number.

² Peters v. West, 692 F.3d 629 (7th Cir. 2012) (copyright action dismissed as a matter of law after examination of supposedly infringing lyrics); Wolf Run Hollow, LLC v. State Farm Bank, F.S.B., No. 12 C 9449, 2013 WL 6182941, at *2 (N.D. Ill. Nov. 26, 2013) (plaintiff conceded that defendant's technology performed a completely different task); K-Tech, 714 F.3d at 1279 (district court's dismissal reversed based on claims' compliance with Form 18); In re Bill of Lading, 681 F.3d at 1335 (district court's dismissal reversed based on claims' compliance with Form 18); M-I Drilling Fluids UK Ltd. v. Dynamic Air Inc., Civil No. 13-2385 ADM/JJG, 2014 WL 494680, at *6 (D. Minn. Feb. 6, 2014) (dismissing claims against only one of two defendants because plaintiff referred to them interchangeably throughout complaint resulting in only one defendant being put on notice)

filing of a complaint."). Accordingly, Audi's Motion to Dismiss Velocity's Complaint for failure to state a claim is denied.

Motion to Transfer

Pursuant to 28 U.S.C. § 1404(a), a district court may "for the convenience of parties and witnesses, in the interest of justice . . . transfer any civil action to any other district or division where it might have been brought." Transfer is appropriate when: (1) venue is proper in both the transferor and the transferee courts; (2) the transfer will serve the convenience of the parties and witnesses; and (3) the transfer is in the interest of justice. 28 U.S.C. § 1404(a); see Coffey v. Van Dorn Iron Works, 796 F.2d 217, 219 (7th Cir. 1986). A district court must consider these factors in light of all the circumstances, on a case-by-case basis, and has discretion regarding the weight accorded to each factor. Coffey, 796 F.2d at 219. The party seeking transfer bears the burden of establishing that the transferee court is clearly more convenient. Id. at 219-20.

Venue

In this case, the first requirement is not in dispute. Both parties agree that venue is proper in the United States District Court for the Northern District of Illinois and the United States District Court for the Eastern District of Michigan.

Convenience of the Parties and Witnesses

Most importantly, a transfer of venue must support the convenience of the parties and witnesses. *Body Sci. LLC v. Bos. Scientific Corp.*, 846 F. Supp. 2d 980, 992 (N.D. Ill. 2012). Courts in this district consider five factors in evaluating convenience: (1) the plaintiff's initial choice of forum; (2) the *situs* of material events; (3) the relative ease of access to sources of proof; (4) the convenience of the parties litigating in the respective forums; and (5) the convenience of the witnesses. *Id.* (citing *Research Automation*, 626 F.3d at 978).